

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
FTX TRADING LTD., et al., Case No. 22-11068 (JTD)  
(Jointly Administered)  
Courtroom No. 5  
824 Market Street  
Debtors. Wilmington, Delaware 19801  
Wednesday, February 15, 2023  
10:00 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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of an Examiner  
[D.I. 176; Filed 12/1/22]

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Court's Ruling:

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## Agenda

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to Objection of the United States Trustee to  
the Application for an Order Authorizing the  
Retention and Employment of FTI Consulting,  
Inc., as Financial Advisor to the Official  
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[D.I. 697, filed on February 13, 2023]

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Brian Simms Declarations

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JPL Exhibit 5 Order from Supreme Court of the Bahamas

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1 (Proceedings commence at 10:07 a.m.)

2 (Call to order of the Court)

3 THE COURT: Good morning, everyone. Thank you.

4 Please be seated.

5 Mr. Landis.

6 MR. LANDIS: Good morning, Your Honor. May I  
7 please the Court, Adam Landis, for the record, from Landis  
8 Rath & Cobb, on behalf of FTX Trading Ltd., and its  
9 affiliated debtors.

10 Your Honor, we are here today with two agendas. I  
11 don't know if the Latin for that is agendum, but we are here  
12 with two agendas; one in the FTX Trading Ltd., case and one  
13 in the FTX Digital Markets case. Nothing is contested, Your  
14 Honor, on either agenda.

15 With respect to the FTX Trading agenda, and we have  
16 spoken with counsel to the joint provisional liquidators, we  
17 thought we would go forward with the FTX Trading Chapter 11  
18 agenda first. We filed a second amended agenda last night  
19 noting that the committee had filed certificates of counsel  
20 with respect to the professional retentions that had been  
21 contested by the U.S. Trustee.

22 I note that, I think, as we were standing here this  
23 morning Your Honor signed the orders for FTI and Jefferies.

24 THE COURT: Yes.

25 MR. LANDIS: So, unless Your Honor has question

1 with respect to anything on the agenda, we believe we can  
2 move right to item number six which is the Court's ruling  
3 with respect to the United States Trustees motion to appoint  
4 an examiner.

5 THE COURT: Okay. I don't have any questions. So,  
6 we can go ahead.

7 So, this is the ruling on the motion to appoint an  
8 examiner. The United States Trustee moved for the appointment  
9 of an examiner in these cases pursuant to Section 1104(c)(1)  
10 and (c)(2) of the Bankruptcy Code. Section 1104 provides  
11 that if a Chapter 11 Trustee is not appointed in a case then  
12 at any time prior to confirmation of a plan:

13 "On request of a party in interest or the United  
14 States Trustee, and after notice and a hearing, the Court  
15 shall appoint an examiner to conduct such an investigation of  
16 the debtor, as is appropriate, including an investigation of  
17 allegations of fraud, dishonesty, incompetence, misconduct,  
18 mismanagement, or irregularity in the management of the  
19 debtor if (I) such appointment is in the interest of the  
20 creditors, and any equity security holders, and other  
21 interests of the estate, or (II) the debtors fixed liquidated  
22 unsecured debts other than debts for goods, services, or  
23 taxes, or owing to an insider exceed \$5 million."

24 The Trustee, joined by several state regulatory  
25 authorities, argues that because there are allegations of

1 massive fraud alleged against the debtors prepetition  
2 management the appointment of an examiner is in the best  
3 interest of the debtor's creditors and other interest holders  
4 under 1104(c)(1).

5           The Trustee also argues that even if I conclude the  
6 requirements of 1104(c)(1) have not been met, I am required  
7 to appoint an examiner under 1104(c)(2) because three of the  
8 debtors meet the debt threshold or the debtors do not, for  
9 the purposes of this motion, contest the debt limit with  
10 regard to the remaining debtors.

11           The debtors, the committee, general unsecured  
12 creditors, and the joint provisional liquidators or FTX  
13 Digital Markets Ltd., appointed in the provisional  
14 liquidation proceeding pending in the Bahamas, object to the  
15 appointment of an examiner arguing that given the  
16 investigations being conducted by the debtors and the  
17 committee, as well as various federal law enforcement and  
18 regulatory agencies, there is no need to appoint an examiner  
19 to conduct yet another costly investigation that would slow  
20 the progress of these cases. Moreover, the objectors argue  
21 that, contrary to the Trustees position, appointment of an  
22 examiner is not mandatory under 1104(c)(2) even if the debt  
23 threshold is met.

24           For the reasons I will explain, I agree with the  
25 objectors and will deny the motion to appoint an examiner.

1           These cases have been described as unique, unusual,  
2 highly complex, and unprecedented to name just a few of the  
3 adjectives applied to them, and they have certainly lived up  
4 to that billing. A multi-billion dollar company built over  
5 the course of just a few years. A spectacular crash with  
6 billions worth of assets missing, allegations of gross  
7 mismanagement and massive fraud leading to criminal  
8 indictments and investigations by numerous federal agencies.

9           Behind that backdrop sit the creditors and the  
10 customers of the debtors; individuals and entities that  
11 trusted the management of the company with a relatively new  
12 type of asset, cryptocurrency, as well as those who did  
13 business with the debtors on a day to day basis. This case  
14 is about making sure that those parties get back as much  
15 value as possible from the debtor's estates.

16           That process began immediately prior to the filing  
17 of cases with the appointment of Mr. Ray as the new CEO of  
18 the debtors. Although appointed by the previous CEO, Mr.  
19 Bankman-Fried, who is currently under federal indictment,  
20 there is no question that Mr. Ray is completely independent  
21 of prior management and the company seems appointed to lead.

22           Mr. Ray is the consummate professional, highly  
23 qualified with decades of experience in taking control of  
24 companies in dire financial condition. Mr. Ray, in turn,  
25 appointed four independent directors to three silos of debtor

1 entities to assist him in determining what happened, how to  
2 sort out the financial condition of the debtors, and return  
3 as much value as possible to creditors and customers.

4           Each of the four directors are also highly  
5 qualified professionals with no prior connection with the  
6 debtors or the debtor's prior management. Mr. Ray also  
7 insured that all prior senior management of the debtors were  
8 removed; two of whom have been indicted and plead guilty to  
9 various crimes involving the management of the debtors.

10 Although some prior officers of the debtors remain in place,  
11 there is no indication they were involved in any wrongdoing,  
12 and according to Mr. Ray all have been stripped of any  
13 decision making authority.

14           Mr. Ray has also retained a group of highly  
15 qualified experts to assist in sorting through the debtor's  
16 poorly maintained records. In many instances records don't  
17 exist at all because the recordkeeping was neglected by prior  
18 management. Mr. Ray testified that those experts, among  
19 other things, are accessing the debtor's extremely vulnerable  
20 electronic information containing crypto-assets that have  
21 already suffered hacking incidents both pre and post-petition  
22 before controls could be restored. Those hacks resulted in  
23 the possible loss of hundreds of millions, if not billions of  
24 dollars' worth, of crypto-assets.

25           He further testified that he has been informed by

1 those experts that given additional persons access to the  
2 data creates the risk of further inadvertent disclosure or  
3 hacking of information that could lead to additional losses.  
4 Indeed, even committee counsel indicated that while they are  
5 working closely with the debtors in conducting investigations  
6 into what happened, the committee is not requesting direct  
7 access to the debtor's data due to those risks.

8           There is no question that an examiner or a Chapter  
9 11 Trustee, for that matter, appointed pursuant to Section  
10 1104 would have the same attributes as Mr. Ray and the  
11 independent directors. That person would be independent with  
12 no connection to the debtors or the debtors prior management.  
13 That person would need to be qualified -- would need to be as  
14 qualified and as experienced as Mr. Ray and that person would  
15 retain qualified and experienced professionals to assist with  
16 the investigation.

17           There is no question that if an examiner was  
18 appointed here the cost of the examination, given the scope  
19 suggested by the Trustee at the hearing, would be in the tens  
20 of millions of dollars and would likely exceed \$100 million.  
21 Contrary to the suggestion of the Trustee, the debtors and  
22 the committee could not merely sit idly by while a months  
23 long investigation unfolded leading to exponential costs to  
24 the estate which would have to be borne by the creditors.

25           While the debtors may ultimately have billions of

1 dollars' worth of assets to distribute, creditors will likely  
2 not come close to recovering the full amount of their losses  
3 and it may take some time to recover anything as the debtors  
4 and the committee work to claw back as much as the assets as  
5 possible.

6           Given the facts and circumstances of this highly  
7 unique case I have no doubt that the appointment of an  
8 examiner would not be in the best interests of the creditors.  
9 There are already multiple investigations underway by  
10 incredibly competent and independent parties. Requiring  
11 creditors to bear the burden of yet another investigation  
12 does not comport with the requirements of Section 1104(c)(1)  
13 or the general scheme of the bankruptcy code; that is to  
14 maximize to recovery to creditors.

15           It is important to keep in mind that while we talk  
16 about the cost of an investigation being born by the debtors  
17 we are actually talking about the cost being born by the  
18 creditors. Every dollar spent in these cases on  
19 administrative expenses is a dollar less to the creditors;  
20 therefore, I will deny the request to appoint an examiner  
21 under 1104(c)(1).

22           The Trustee argues, however, that even if I  
23 conclude that the appointment of an examiner is not in the  
24 best interests of the creditors, I am still obligated to  
25 appoint one as mandated by Section 1104(c)(2) because the

1 debtors met the debt threshold or, at least, do not contest  
2 that they do for purposes of this motion. Even the Trustee  
3 concedes, however, that a Bankruptcy Court has some  
4 discretion in determining whether or not an examiner must be  
5 appointed under 1104(c)(2), for example, for a motion to  
6 appoint an examiner is being used by a creditor to obtain an  
7 advantage in plan negotiations. In other words, the Trustee  
8 agrees there are times when the appointment of an examiner  
9 would not be appropriate under 1104(c)(2).

10 To be sure there is a split of authority over  
11 whether 1104(c)(2) leaves any discretion on the appointment of  
12 an examiner, Courts that hold there is no discretion  
13 concentrate on the language in 1104 that states:

14 "The Court shall appoint an examiner if the debtor  
15 meets the debt requirements of (c)(2)."

16 Those Courts either ignore the additional language  
17 of 1104 that states: "To conduct such an investigation of the  
18 debtors as is appropriate" or conclude that the language only  
19 means the Court can direct the scope and nature of an  
20 examination after an examiner is appointed. For example, see  
21 In Re Revco, 898 F.2d 498 at 501, Sixth Circuit (1990). The  
22 Court held appointment is mandatory, but: "The Bankruptcy  
23 Court retains broad discretion to direct the examiner's  
24 investigation including its nature, extent, and duration."

25 The Sixth Circuit is the only Circuit Court of

1 Appeals to consider the issue. Other courts have concluded  
2 that the as appropriate language in 1104(c) permits a  
3 Bankruptcy Court to deny the appointment of an examiner in  
4 limited circumstances even if the debtor meets the debt  
5 requirements of (c) (2).

6 Examples are In Re Residential Capital LLC, 474  
7 B.R. 112, 117, Bankruptcy SDNY (2012); In Re Dewey & LeBoeuf,  
8 478 B.R. 627, 629, Bankruptcy SNDY (2012); In Re Shelter  
9 Resources, 35 B.R. 304, 305, Bankruptcy Northern District of  
10 Ohio (1983); In Re Gilman Services, 46 B.R. 322, 327,  
11 Bankruptcy District of Massachusetts (1985); In Re Erickson  
12 Retirement Communities LLC, 425 B.R. 309 at 312, Bankruptcy  
13 Northern District of Texas (2010); In Re GHR Companies, Inc.,  
14 43 B.R. 165, 170, Bankruptcy District of Massachusetts  
15 (1984).

16 Indeed, every bankruptcy judge in this district to  
17 consider the issue has concluded that there is discretion;  
18 see In Re SA Telecom Inc., Case No. 97-2395-2401, Judge  
19 Walsh, March 27th, 1998, Hearing Transcript at 82; In Re  
20 Spanion, 426 B.R. 114, 128, Bankruptcy Court District of  
21 Delaware (2010), a Judge Shannon decision; In Re Visteon  
22 Corporation, No. 09-11786, a Judge Sontchi decision from May  
23 12th, 2010, Hearing Transcript at 170; In Re Washington  
24 Mutual, Inc., Case No. 08-12229, a Judge Walrath decision,  
25 Bankruptcy District of Delaware, May 5th, 2010, Hearing

1 Transcript at 97; and two of my own prior cases In Re Cred  
2 Inc., Case No. 20-12836, Bankruptcy District of Delaware,  
3 December 12th, 2020, Hearing Transcript at 95, and In Re  
4 Mallinckrodt PLC, Case No. 20-12522, November 22nd, 2021,  
5 Hearing Transcript 28 through 46.

6 As Judge Glenn posited the question in Residential  
7 Capital:

8 "If the as is appropriate language provides such  
9 discretion with respect to the nature, extent, and duration  
10 of the investigation, then why doesn't the same language  
11 provide discretion to just say no to an examiner  
12 investigation where it may not be justified on the particular  
13 facts and circumstances of the case."

14 That is 474 B.R. at 118.

15 As the Trustee pointed out during argument,  
16 ultimately Judge Glenn did appoint an examiner in Residential  
17 Capital because (I) no plan had been confirmed; (II) no  
18 Trustee had been appointed; (III) the debtor had fixed debts  
19 exceeding \$5 million; and (IV) investigation was appropriate,  
20 and an investigation by the committee had just begun.

21 The first three elements of this analysis are  
22 certainly present here, but while one could argue the fourth  
23 is also met because the debtors and the committee are in the  
24 early stages of their investigations the facts present here  
25 are fundamentally different then Residential Capital.

1 First, Judge Glenn recognized in Residential  
2 Capital that:

3 "Other than the committee, there is currently no  
4 independent party with the ability and authority to fully  
5 investigate and analyze the transactions at issue."

6 Judge Glenn emphasized the no independent party in  
7 that state. By contrast, in this case, all the senior  
8 managers of the company accused of wrongdoing have been  
9 removed and replaced by extremely competent independent  
10 professionals led by Mr. Ray with the ability and authority  
11 to investigate all claims that might ultimately benefit the  
12 creditors in these cases.

13 Moreover, as indicated before, all remaining  
14 employees and officers of the debtors that have not been  
15 accused of wrongdoing do not possess any decision-making  
16 authority. Mr. Ray has also retained professionals that are  
17 fully capable of conducting a thorough investigation.

18 Second, as Judge Glenn recognized, an examiner  
19 investigation might not be appropriate when, among other  
20 things, the debtors senior management has been indicted; 474  
21 B.R. at 118, Footnote 6. Here, of course, senior management  
22 has been indicted; two have plead guilty and a third is  
23 scheduled for trial in October.

24 Finally, the issues to be investigated in  
25 Residential Capital involved a "Complex constellation of pre

1 and post-bankruptcy transactions involving billions of  
2 dollars in transfers and financing among interested parties."  
3 That is at 115, Note 3, emphasis on "interested parties."

4 In Residential Capital the allegations were that  
5 transfers between the debtors and certain secured creditors  
6 benefited the secured creditors to the detriment of unsecured  
7 creditors. Here, there are no secured creditors. There are  
8 only unsecured creditors.

9 Finally, the issues to be investigated in  
10 Residential Capital -- excuse me, moreover, while the  
11 transfers at issue in Residential Capital were clearly  
12 complex commercial transactions, there was no indication that  
13 accessing the debtor's financial information would create a  
14 risk of further harm to the debtors or their creditors. By  
15 contrast, the uncontroverted testimony during the hearing in  
16 this matter established that given the debtor's business and  
17 the vulnerability of the debtor's financial data, permitting  
18 additional parties access to the financial information would  
19 create an increased risk of further loss through inadvertent  
20 disclosures or hacking.

21 Therefore, I conclude that under the facts and  
22 circumstances of these cases, appointment of an examiner is  
23 not needed pursuant to 1104(c)(2) and appointing one would  
24 impose an unnecessary burden on the debtors and ultimately  
25 the creditors for whose benefit these cases are being

1 pursued. Contrary to the Trustees position this is not  
2 inconsistent with the language of the statute or the  
3 legislative history.

4 Congress did not explain the language of the  
5 statute itself what it meant by the "as is appropriate"  
6 limitation. As I previously mentioned, many courts have  
7 concluded that it means a Bankruptcy Court must always  
8 appoint an examiner if the debt limit has been met, but can  
9 limit the nature, extent and duration of any examination.  
10 Others have concluded that if the Bankruptcy Court can limit  
11 the scope and duration it must also mean that the Court can  
12 conclude that no examination is needed at all under specific  
13 facts and circumstances.

14 Clearly, there is more than one logical conclusion  
15 as to the meaning of Section 1104(c). The legislative  
16 history of 1104(c), which at the time of its enactment was  
17 1104(b), concluded that:

18 "The standards for the appointment of an examiner  
19 are the same as those for the appointment of a Trustee. The  
20 protection must be needed and the cost and expense must not  
21 be disproportionately high."

22 HR Rep No. 95-595, Ninety-Fifth Congress First  
23 Section 402 (1977).

24 Thus, the legislative history supports the  
25 conclusion that an examiner shall be appointed "as

1 appropriate under the particular circumstances of the case,"  
2 but "the protection must be needed." That legislative intent  
3 is met in cases where even though the debt limit of  
4 1104(c)(2) is met the evidence establishes and examiner is  
5 not needed under the facts and circumstances of a particular  
6 case.

7 Therefore, I will sustain the objections and deny  
8 the motion to appoint an examiner. The parties should meet  
9 and confer and submit a form of order under certification of  
10 counsel.

11 Any questions?

12 (No verbal response)

13 THE COURT: Next up.

14 MR. LANDIS: Thank you, Your Honor.

15 I just wanted to go back very briefly to the  
16 second amended agenda. There's an Item 5 that was the  
17 committee's motion for permission to file a response to the  
18 United States Trustees objection. I believe that matter is  
19 mooted out and the committee is not pressing it, but I  
20 didn't, for house keeping purposes, want to just let that  
21 hang out on the agenda. So, you'll probably hear from the  
22 committee on that.

23 THE COURT: It does seem moot.

24 MR. LUNN: Your Honor, Matthew Lunn from Young  
25 Conaway.

1 I believe it's just the motion for relief to file  
2 the reply Your Honor. Simply procedure. I don't believe the  
3 U.S. Trustee had an objection to it. Housekeeping we can  
4 upload a form of order if it's acceptable.

5 THE COURT: Al right. We'll go ahead and just  
6 enter the order.

7 MR. LANDIS: Thank you. I just wanted to make  
8 sure that that loose end was tied. And with that, we can  
9 pass the podium over to counsel to the joint provisional  
10 liquidators.

11 THE COURT: All right.

12 MR. SHORE: Good morning, Your Honor. Chris Shore  
13 from white & Case on behalf of the joint provisional  
14 liquidators in the Chapter 15 case now.

15 We're here today seeking recognition of the  
16 pending Bahamian liquidation as a foreign proceeding and  
17 grating related relief. Tending in the courtroom today are  
18 Brian Simms and Peter Greaves; two of the JPL's. The third,  
19 Kevin Cambridge, unfortunately was unavailable to come today  
20 because he has COVID.

21 As for today's agenda, we're happy to report that  
22 there's no pending objections to our request for recognition.  
23 So, if it's okay with the Court, I'd like to proceed as  
24 follows:

25

1 First, I'd like to move in the evidence into the  
2 record and request that the Court enter the proposed form of  
3 order which we filed on Monday at Docket 125. Then I'd like  
4 to give the Court a fifteen minute status update, not in the  
5 way of evidence, but just to give Your Honor a sense of what  
6 the JPL's have been doing and give you kind of a six month  
7 look forward so you know what's going to be happening in the  
8 case.

9 And good news is I don't perceive that we're going  
10 to be doing a lot in the fifteen over that time but maybe at  
11 the end we can set a further status conference just to let  
12 you know what's happening in that proceeding. And, of  
13 course, at any time if Your Honor has questions, I'm happy to  
14 answer them or have others assist in the answer.

15 As for the evidence, the verified petition is  
16 filed at Docket No. 1 of the Chapter 15. We have three  
17 declarations that we'd like to submit into evidence in  
18 support of the application. Those are the two declarations  
19 of Mr. Simms and the declaration of Sophia Rolle-Kap in  
20 support of the petition at Dockets 2, 5, and 8.

21 Mr. Simms is here should you have any questions  
22 for him. Ms. Rolle-Kap had to be in the Bahamas yesterday at  
23 the recognition of the debtors Chapter 11 cases in the  
24 Bahamian proceedings, but she is available via zoom should  
25 the court have any questions about the intricacies of

1 Bahamian liquidation law, but I'd like to offer their  
2 declarations into evidence as Exhibits 1 to 4 on the exhibit  
3 list. We distributed it to the parties in interest and the  
4 C. And also move into evidence Exhibit 5 which is an order  
5 from the Supreme Court of the Bahamas regarding the JPL's  
6 ability to commence the Chapter 15 action.

7 THE COURT: Okay. Anyone have an objection to  
8 introduction of the evidence?

9 MR. BROMLEY: Your Honor, Jim Bromley from  
10 Sullivan & Cromwell on behalf of the Chapter 11 debtors.

11 We do not have an objection to the admission of  
12 the evidence with respect to the recognition proceeding, but  
13 there are certain aspects of the declarations which we  
14 believe go beyond the four corners of the Chapter 15  
15 recognition. So, as long as it's limited just to Chapter 15  
16 recognition, just to this hearing, and just to this relief,  
17 we have no objection.

18 THE COURT: All right. They're admitted without  
19 objection subject to the limitation that Mr. Bromley  
20 requested.

21 (Evidence received into evidence)

22 MR. SHORE: As for the motion itself as part of  
23 the cooperation agreement that we entered into with the  
24 debtors, we agreed to support their application for  
25 recognition of the Bahamas. They agreed to support our

1 application here and we took their comments on the order. We  
2 then reached agreement on language with the DOJ, the U.S.  
3 Trustee, and the committee. So, as I said, the form of  
4 order, which has been agreed to by the parties, is at Docket  
5 125.

6 I do want to note that there have been a number of  
7 informal letters submitted by Mr. Leslie Stewart, a Bahamian  
8 citizen. Specifically, he sent a letter that was docketed in  
9 the Chapter 11 cases at Docket 357 and some others. We don't  
10 believe any of them constitute an objection to recognition  
11 but wanted to raise this to Your Honor's attention.

12 THE COURT: I did see those letters and I directed  
13 they be put on the docket just because I wanted everyone to  
14 be able to see what kind of things that I'm receiving from  
15 folks.

16 MR. SHORE: Yes, Your Honor. So, unless the Court  
17 has any questions, we'd respectfully request that the court  
18 enter the amended proposed order and we move to the status  
19 update.

20 THE COURT: Okay. Anybody wish to be heard on the  
21 recognition?

22 (No verbal response)

23 THE COURT: All right. Satisfied the relief is  
24 appropriate, I will enter the order.

25

1 MR. SHORE: So, just to -- I wanted to give Your  
2 Honor a sense of where the JPL's have been and, as I said,  
3 give a kind of six month look forward so you know what's  
4 going on and I'll focus on, if you think of the debtors  
5 presentation in the silos, FTX Digital is a subsidiary within  
6 the FTX international platform, that international silo.

7 Now, the first day presentation may have left the  
8 court with the impression that the FTX Digital estate played  
9 an undersized role in the saga and I do want to address that  
10 because it is actually, from our perspective, a big piece of  
11 the puzzle that's going to need to get resolved.

12 At the time of the collapse, Digital employed  
13 eighty-four persons including thirty-eight who were  
14 transferred over from other FTX debtor entities including a  
15 board in key management personnel. That company was the  
16 headquarters in Nassau, Bahamas. It's one of fifty-two  
17 properties that the JPL's have identified in the Bahamas all  
18 held in the name of a Chapter 11 debtor in this case, FTX  
19 Property Holdings. Amongst those properties was a deluxe  
20 office suite, residential complexes, and accommodations for  
21 the employees, and a six acre FTX campus in New Providence,  
22 Bahamas. All of these properties, we seem to think, are  
23 worth north of \$250 million. They were financed by FTX  
24 Digital and are on FTX's Digital's balance sheet as  
25 intercompany receivables.

1           As part of the cooperation agreement, we've agreed  
2 with the debtors that the JPL's will take the lead on  
3 liquidating that real estate in the Bahamas. So, there is a  
4 big real estate piece in FTX Digital.

5           THE COURT: There was a motion to dismiss that  
6 entity, wasn't there?

7           MR. SHORE: I thought it was the Turkish  
8 proceeding that did get dismembered.

9           THE COURT: I thought I remembered seeing another  
10 one for one of the Bahamian entities.

11           MR. BROMLEY: Yes, Your Honor. The properties in  
12 the Bahamas are actually owned in fee by a U.S. debtor, and  
13 the joint provisional liquidators did file a motion to  
14 dismiss that individual proceeding. That's been resolved --

15           THE COURT: Okay.

16           MR. SHORE: Sorry. Yes. That one has been  
17 resolved as part of the corporation agreement. We're going  
18 to go ahead and mark it and sell those assets, and then we're  
19 going to have a discussion about where those assets go at a  
20 later date, but --

21           THE COURT: So, I need to put something on the  
22 docket to close that out, close that motion out.

23           MR. SHORE: Okay. We can address that.

24           So, of the eighty-four employees who were living  
25 in the Bahamas at the time, there are sixteen employees who

1 remain working on a variety of forensics matters and  
2 assisting with ongoing investigations. But moving back in  
3 time, as Mr. Bromley said at that first day hearing, the FTX  
4 international platform was primarily a digital assets trading  
5 in exchange platform for not U.S. citizens.

6 To that end, FTX was created -- FTX Digital was  
7 created in July 2021 for maintaining -- for the purpose of  
8 migrating the business. And you might remember Mr. Bromley  
9 said that the entity was moving around the country and then  
10 offshore. It was all going to be moving to the Bahamas where  
11 this giant real estate conglomeration was and then  
12 headquarters. And that was going to allow FTX Group to take  
13 advantage of the Bahamas favorable regulatory environment in  
14 the newly created DARE Act which you've kind of heard about.

15 The question that's going to come up in this case  
16 is what was the status of that movement between the time that  
17 Digital was created and FTX and Digital filed their  
18 respective proceedings. And I'm going to come back to that  
19 migration concept in a bit, but I did want to give Your Honor  
20 a sense before I get there of how the Bahamian proceeding is  
21 going to go along. The Bahamian proceedings are either  
22 voluntary or court supervised. Ours is court supervised. To  
23 that end, Mr. Simms, Mr. Greaves, and Mr. Cambridge were  
24 appointed as joint provisional liquidators.

25

1           They -- the Supreme Court of the Bahamas has  
2 exclusive jurisdiction. Right? Your Honor has exclusive  
3 jurisdiction over assets worldwide of the debtors. The  
4 Supreme Court of the Bahamas is the one that has exclusive  
5 jurisdiction over insolvency proceedings and has broad  
6 authority to make winding up orders for all types of  
7 companies.

8           When a company is being wound up compulsively by  
9 the Court, the Court issues an order which describes the  
10 steps that the liquidators must take to liquidate the company  
11 and the liquidator then -- as the JPL's here have been filing  
12 periodic status updates with the Bahamian Court as to have,  
13 they're doing on the order laying out their duties.

14           Once appointed, liquidators generally gather  
15 assets, distribute the companies' assets to the creditors on  
16 a pari passu basis. They have broad authority to bring and  
17 defend lawsuits, file claims, engage in business on behalf of  
18 the debtors, so it's best really to think about the JPL's as  
19 Chapter 11 debtors. There are some distinctions, but  
20 normally the process runs that way.

21           So, to that end, over the past few months, let's  
22 talk about what they've been doing and then I'll come to what  
23 needs to get done. Beginning right from appointment, the  
24 JPL's took steps to identify and gain custody of cash.  
25 They've identified approximately \$143 million of cash held by

1 Silvergate and Moonstone which Your Honor may have heard  
2 about. We filed requests for provisional relief with respect  
3 to those funds and then, as the Court knows, the U.S.  
4 Department of Justice seized the funds, but the JPL's are an  
5 active discussion with the DOJ with respect to the release of  
6 the funds and hope to have a consensual resolution on that.

7           The JPL's also established cash management  
8 controls to ensure proper stewardship and security over the  
9 estate funds, much like the debtors have been doing, and the  
10 controls include rolling cash flow forecasts, payment  
11 approval controls, anti-money laundering, treasury controls;  
12 all the things that you would expect a U.S. Chapter 11  
13 Trustee to do.

14           There have been significant efforts, and it's part  
15 of their requirements, to communicate with customers and  
16 creditors. The JPL's launched a general informational  
17 website and creditor portal website. They've also sent  
18 letters out to approximately 2.4 million of potential  
19 customers inviting them to register their contact information  
20 in order to receive updates of what's going on.

21           They've also been, much like the U.S. debtors,  
22 been in active communication with regulators in the Bahamas  
23 and in the U.S., and participating in investigations as well.  
24 We have been active in the Chapter 11 case. I'll get to it.  
25 We believe we're a very large creditor in these cases, but,

1 you know, the main goal, which we reached early on in the  
2 case, was the cooperation agreement which this Court has  
3 approved, and the Bahamian Court has approved. And it just  
4 gives us a framework from which we're going to try and figure  
5 out how the two proceedings are going to be done.

6 This is where we are, just to get a sense of the  
7 current financial picture, not evidence, but just give Your  
8 Honor a sense of the size of what we're talking about. As I  
9 said, there's about \$220 million in cash, \$143 subject to the  
10 DOJ seizure order. There's the \$276 million receivable  
11 relating to the property, but so far, the JPL's have traced  
12 two major sources of out flows from their accounts in the  
13 lead up to the case. \$5.6 billion was transferred from FTX  
14 Digital custodial accounts to a U.S. debtor, FTX trading, and  
15 \$2.1 billion was transferred from FTX Digital custodial  
16 accounts to Alameda, another Chapter 11 debtor.

17 So, to get the proper sense of the size here,  
18 we're talking about \$7.7 billion of cash out flows from the  
19 Bahamian estate to the U.S. debtors. And then we have other  
20 tangible assets of about \$3 million mostly relating to office  
21 furniture, equipment, and the fleet of cars that the  
22 employees had in the Bahamas.

23 So, that's where we stand right now. Over the  
24 next six months -- we got a deal with the customer migration  
25 issue. Obviously, determining whether customers were

1 customers of U.S. debtors or Digital is going to be critical  
2 to any distribution scheme. We've got to address the issue  
3 of customer trust claims as has happened in many other crypto  
4 cases. There are unresolved legal and factual issues as to  
5 the nature of the customers deposits whether they're held in  
6 trust, whether they're general unsecured claims, and we're  
7 going to need to work through that.

8           We've got open trade contracts that we're going to  
9 need to address and see if there can't be a way to  
10 restructure the platform, and then as the debtors are doing  
11 here, there's a ton of work being done into antecedent  
12 transactions. Not just intercompany, but also with respect  
13 to third parties to determines whether those third parties or  
14 any of the persons associated with the transactions need to  
15 bring money back into the estate.

16           So, as I said, there's a lot of work that needs to  
17 be done. I'm not sure how much of it is going to need the  
18 involvement of the Court, but we may be back seeking  
19 additional relief from the Court to be able to get all that  
20 stuff done. And unless Your Honor has any questions, I just  
21 think we -- it's probably best to set a status conference  
22 sometime in the May, June timeframe and come back and kind of  
23 tell you where we are on those issues and then give you a  
24 look forward again just so you're not wondering what's  
25 happening with your Chapter 15 case.

1 THE COURT: Okay. I appreciate the update, Mr.  
2 Shore. Why don't we set a status conference for May 17th at  
3 10:00 a.m.

4 MR. SHORE: All right. Thank you very much, Your  
5 Honor.

6 THE COURT: Thank you. I appreciate it.

7 Mr. Bromley.

8 MR. BROMLEY: Your Honor, I just would like to  
9 mention a couple things from our perspective. One, is we did  
10 have a hearing yesterday in the Bahamas and the Supreme Court  
11 of the Bahamas has agreed to enter an order that would be  
12 consistent with the order that Your Honor will enter here to  
13 allow the two proceedings -- sets of proceedings to be  
14 recognized. The U.S. proceedings being recognized in the  
15 Bahamas, the Bahamian proceedings being recognized here in  
16 the United States.

17 THE COURT: Okay. I don't know if you're just not  
18 speaking into the microphones or if we're --

19 MR. BROMLEY: No. I'm sorry. I'm a little rough  
20 today.

21 THE COURT: Yes. I know the feeling.

22 MR. BROMLEY: I wish I could say it was because I  
23 was out drinking last night, but I wasn't.

24 THE COURT: I wasn't either.  
25

1 MR. BROMLEY: Your Honor, just wanted to point out  
2 there was a hearing yesterday in the Bahamas. The Supreme  
3 Court of the Bahamas has agreed to enter an order to  
4 recognize the Chapter 11 proceedings in the Bahamas so that  
5 there will be a coincident recognition in both jurisdictions,  
6 right. So, we'll have a recognition here. A recognition in  
7 the Bahamas. And the corporation agreement had required that  
8 both the orders be entered so they're mutually dependent on  
9 each other.

10 The other thing I'd like to say, Your Honor, I  
11 hadn't been aware that Mr. Shore was going to make any  
12 comments about issues, and one of the things that are coming  
13 up. And I do think that it's important that the Chapter 11  
14 debtors also make a statement here. Many of the points that  
15 Mr. Shore mentioned is in terms of things like assets that  
16 were in Digital market accounts, or the migration of  
17 customers, and things of that sort. Those are all open  
18 issues.

19 The cooperation agreement is a starting point, but  
20 the issues as to whether assets belong in the Bahamian estate  
21 or in the U.S. estate are open issues. And so, the statement  
22 that Mr. Shore has made in that regard are statements that  
23 the U.S. debtors reserve all their rights on and, frankly,  
24 disagree with many of them.

25 THE COURT: Understood.

1 MR. BROMLEY: Thank you, Your Honor.

2 THE COURT: Thank you.

3 Anything else?

4 (No verbal response)

5 THE COURT: Where do we stand on the examiner?

6 You knew what I was going to ask, Mr. Landis.

7 MR. LANDIS: Thank you, Your Honor. For the  
8 record, Adam Landis from Landis Rath & Cobb on behalf of the  
9 Chapter 11 debtors.

10 Yes. I saw that question coming and I can  
11 represent to the Court that the parties have been discussing  
12 this periodically. Sometimes more frequently than others.  
13 But there are discussions going back and forth. We've  
14 identified a couple of potential fee examiners and we're  
15 trying to come to ground to have an agreement on this rather  
16 than submit it to the Court for the Courts determination.

17 So, we're still working on that. We hope to have  
18 it done soon and we do appreciate that the Court is not going  
19 to approve any fee applications unless and until a fee  
20 examiner is appointed and has an opportunity to review those  
21 applications.

22 THE COURT: Okay. Thank you.

23 All right anything else?

24 (No verbal response)

25 THE COURT: Well, it turned out to be a lot

1 shorter hearing than I had anticipated. I appreciate  
2 everyone's cooperation. I appreciate the updates.

3 We are adjourned. Thank you.

4 (Proceedings concluded at 10:46 a.m.)  
5  
6  
7  
8  
9  
10

11 CERTIFICATION

12 I certify that the foregoing is a correct  
13 transcript from the electronic sound recording of the  
14 proceedings in the above-entitled matter to the best of my  
15 knowledge and ability.  
16

17 /s/ Mary Zajackowski

February 15, 2023

18 Mary Zajackowski, CET-531

19 Certified Court Transcriptionist

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